

SENATE BILL No. 248

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-37-4.

Synopsis: Testimony of child in abuse cases. Provides that children less than 14 years of age (and certain older disabled children) who are the victim of a sex crime, battery, confinement, kidnapping, incest, or neglect of a dependent may not be required to testify at trial more than once or upon retrial. Permits the introduction of the child's videotaped testimony under certain conditions.

Effective: July 1, 2004.

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January 8, 2004, read first time and referred to Committee on Judiciary.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 248

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-37-4-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) This section
3 applies to a criminal action under the following:

- 4 (1) Sex crimes (IC 35-42-4).
- 5 (2) Battery upon a child (IC 35-42-2-1(2)(B)).
- 6 (3) Kidnapping and confinement (IC 35-42-3).
- 7 (4) Incest (IC 35-46-1-3).
- 8 (5) Neglect of a dependent (IC 35-46-1-4).
- 9 (6) An attempt under IC 35-41-5-1 for an offense listed in
10 subdivisions (1) through (5).

11 (b) As used in this section, "protected person" means:

- 12 (1) a child who is less than fourteen (14) years of age; or
- 13 (2) a mentally disabled individual who has a disability attributable
14 to an impairment of general intellectual functioning or adaptive
15 behavior that:

- 16 (A) is manifested before the individual is eighteen (18) years
17 of age;



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(B) is likely to continue indefinitely;

(C) constitutes a substantial impairment of the individual's ability to function normally in society; and

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(c) A statement or videotape that:

(1) is made by a person who at the time of trial is a protected person;

(2) concerns an act that is a material element of an offense listed in subsection (a) that was allegedly committed against the person; and

(3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for an offense listed in subsection (a) if the requirements of subsection (d) are met.

(d) A statement or videotape described in subsection (c) is admissible in evidence in a criminal action listed in subsection (a) if, after notice to the defendant of a hearing and of ~~his~~ **the defendant's** right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:

(A) conducted outside the presence of the jury; and

(B) attended by the protected person;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one

(1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for medical reasons.

(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

(iv) The protected person is a child who has previously testified at trial and is not required to testify again under

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IC 35-47-4-16.

(e) If a protected person is unavailable to testify at the trial for a reason listed in subsection (d)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

- (1) at the hearing described in subsection (d)(1); or
- (2) when the statement or videotape was made.

(f) A statement or videotape may not be admitted in evidence under this section unless the prosecuting attorney informs the defendant and the defendant's attorney at least ten (10) days before the trial of:

- (1) ~~his~~ **the prosecuting attorney's** intention to introduce the statement or videotape in evidence; and
- (2) the content of the statement or videotape.

(g) If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

- (1) The mental and physical age of the person making the statement or videotape.
- (2) The nature of the statement or videotape.
- (3) The circumstances under which the statement or videotape was made.
- (4) Other relevant factors.

SECTION 2. IC 35-37-4-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 16. (a) As used in this section, "child victim" means a child who is the victim or alleged victim of a crime described in subsection (b) who is:**

- (1) less than fourteen (14) years of age; or**
- (2) at least fourteen (14) years of age but less than eighteen (18) years of age and has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:**
 - (A) is likely to continue indefinitely;**
 - (B) constitutes a substantial impairment of the child's ability to function normally in society; and**
 - (C) reflects the child's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.**

(b) This section applies to a criminal action involving a child

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1 victim under the following:
2 (1) Sex crimes (IC 35-42-4).
3 (2) Battery upon a child (IC 35-42-2-1(2)(B)).
4 (3) Kidnapping and confinement (IC 35-42-3).
5 (4) Incest (IC 35-46-1-3).
6 (5) Neglect of a dependent (IC 35-46-1-4).
7 (6) An attempt under IC 35-41-5-1 for an offense listed in
8 subdivisions (1) through (5).
9 (c) A child victim who has previously testified at a criminal trial
10 for a criminal action described in subsection (b) and been subject
11 to cross-examination may not be required to testify again at the
12 same trial or upon retrial.

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